

ORDINANCE NO. 2280

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF GARDNER, KANSAS BY REPEALING AND REPLACING IN THEIR ENTIRETY SECTIONS 18.95.020 and 18.95.030 OF TITLE 18 OF THE CODE OF THE CITY OF GARDNER, KANSAS, AMENDING DISTRICTS "M-1" RESTRICTED INDUSTRIAL DISTRICT.

WHEREAS, the City of Gardner, Kansas initiated the changes to Section 16-518.2 and 16-518.3 amending districts "M-1" RESTRICTED INDUSTRIAL DISTRICT requirements within the City of Gardner, Kansas; and

WHEREAS, a public hearing on the City's request was held before the Planning Commission of the City of Gardner, Kansas, on the 27th day of May, 2008; and

WHEREAS, Ordinance 2273 was adopted by the Governing Body of the City of Gardner, Kansas on May 19, 2008 for the incorporation of a complete recodification of its Code of the City of Gardner, Kansas; and

WHEREAS, this text amendment was advertised for public notice and presented to the Planning Commission as amending Chapter 16, Article 5, Sec. 518, District "M-1" Restricted Industry District, of the Code of the City of Gardner, Kansas, the title of the zoning ordinance under the old city code format prior to adoption of ordinance 2273; and

WHEREAS, said Planning Commission has recommended that said amendments to the zoning ordinance of the City of Gardner, Kansas, be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: That the zoning ordinance, Sections 18.95.020 and 18.95.030 OF Title 18 of the Code of the City of Gardner, Kansas, be repealed and replaced in its entirety as follows:

18.95 DISTRICT "M-1" RESTRICTED INDUSTRY DISTRICT.

95.020 PERMITTED USES. In District "M-1" no building, structure, land or premises shall be used and no building or structure shall be here after erected, constructed, moved, or altered, except for one or more of the following uses. Commercial development should be limited to those uses to serve the businesses, employees and visitors to the industrial area:

- A. Broadcasting studios and cable TV services.
- B. Business supply services.
- C. Catalog and mail order services.
- D. Commercial bakeries.
- E. Commercial pick-up-or delivery services.
- F. Consumer repair services.
- G. Contractors services, yards and storage.

- H. Dry cleaning and laundries warehouse facilities (no retail).
- I. Convenience stores with gas sales.
- J. Laboratories.
- K. Manufacturing, processing, fabricating or assembling of any commodity or product for sale at retail or wholesale except junk or salvage.
- L. Mini-warehouses.
- M. Motor vehicle tow lots, except salvage.
- N. Offices.
- O. Printing and publishing.
- P. Public and private utility facilities and governmental maintenance facilities, including the outdoor screened storage of and maintenance of motor vehicles and equipment.
- Q. Public parks.
- R. Public safety services.
- S. Public utility substations and communication facilities.
- T. Repair and servicing of motor vehicles, machinery, and equipment of all types, including body shops, paint shops, transmission shops, and facilities for engine overhauls.
- U. Research services.
- V. Retail nurseries, lawn and garden supplies.
- W. Retail sales of commodities manufactured, processed, fabricated, assembled, warehoused or stored on the permits.
- X. Sign painting and fabrication.
- Y. Taxi & limousine dispatching centers.
- Z. Warehousing, wholesaling or storage of any commodity except junk or salvage.
- AA. Wholesaling facilities.
- BB. Auction yard and auction houses (non-livestock).
- CC. Animal pounds and kennels within an enclosed building.
- DD. Taxi and limousine storage and maintenance facilities.

95.030 **CONDITIONAL USES.** The following uses have characteristics that may not be compatible with many of the land uses that are permitted in the M-1 Zoning District, or may not be well-suited to industrial development standards, or may not be in harmony with the intent of the M-1 Zoning District and existing industrial uses. These characteristics include but are not limited to: traffic flow volumes and patterns, parking requirements, and various operational needs. To protect the health, safety and welfare of the general public, the following land uses may be allowed in this district by Conditional Use Permit when submitted to and reviewed and approved by the Planning Commission and City Council:

- A. Health and fitness clubs, dance studios, martial arts clubs, and gymnasiums.
- B. Grain elevators.

- C. Livestock auction sales and/or sales of farm related products including seed and feed.
- D. Child care centers.
- E. Churches and similar places of worship
- F. Assembly halls and convention centers.
- G. Clubs or lodges.
- H. College or university.
- I. Vocational schools.
- J. Communication transmission towers and antennas over sixty feet (60').

1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a Conditional Use Permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.
 - b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
 - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites with a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
 - d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
 - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
 - f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
 - g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 1. The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communication tower or facility within six months (6) in the event the lessee fails to remove it upon abandonment.
2. Height - The maximum height which may be approved for a communication tower is 160 feet. A lightning rod, not to exceed ten feet (10'), shall not be included within the height limitation. All new towers in excess of 100 feet shall be designed to accommodate at least two (2) additional providers. The location of the additional antennas on a legally existing tower shall not require additional approval of the Planning Commission or City Council.
3. Setbacks - All towers and antennas shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the antenna shall be setback from the property lines a distance equal to the height of the communication tower. A lesser setback may be

- approved with the Conditional Use Permit, upon demonstration by a licensed structural engineer registered in the state of Kansas that the fall zone of the communication tower is within the radius of the setback. If the communication tower and antenna are setback less than the height of the tower or antenna, it shall be inspected and approved upon construction, by a licensed structural engineer, registered in the state of Kansas. Such towers shall be re-inspected every five (5) years to insure the structural integrity and safety of the antenna.
4. Tower Design - All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.
 5. Tower Color - All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or City Council. Exceptions may be granted, based on FAA or FCC regulations.
 6. Equipment Storage - Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.
 7. Accessory Structures - All ground equipment shall be stored with a structure, built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.
 8. Landscaping - All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Section 16-1101 of the zoning ordinance.
 9. Access - Access from a public or private roadway. The City Council may wave surfacing materials, curbing and storm water drainage requirements, if recommended by the Engineering Administrator.
 10. Security Fencing - Sites shall be enclosed by security fencing to be indicated on the site plan.
 11. Permitting - A building permit with structural and electrical drawings, sealed by licensed structural engineer registered in the state of Kansas, is required.

SECTION THREE: All other ordinances of said City in conflict herewith are hereby amended to conform to the provisions of this Ordinance.

SECTION FOUR: This Ordinance shall take effect and be in force from and after passage and publication as provided by law.

PASSED by the Council this 16th day of June 2008.

/s/ Carol Lehman
Carol Lehman, Mayor

ATTEST:

/s/ Teresa Anderson
Teresa Anderson, City Clerk